

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHAYLA M DONELSON
Claimant

APPEAL NO. 14A-UI-03218-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 02/23/14
Claimant: Respondent (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer appealed a representative's March 12, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. Notices of hearing were mailed to the parties' last-known addresses of record informing them a telephone hearing would be held at 3:00 p.m. on May 12, 2014. The employer's representatives, Marcy Schneider, appeared for the hearing. The employer's witness was called at two phone numbers, but the employer's witness did not answer at either phone number. The employer's witness was not available at the telephone number provided for the hearing and did not participate in the hearing.

ISSUE:

Should the appeal be dismissed when the employer/appellant's witness does not participate in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The employer/appellant's witness was not available at the telephone number provided for the hearing and did not participate in the hearing. The employer did not request a postponement of the May 12 hearing as required by the hearing notice.

The representative's March 12, 2014 determination concluded the claimant was qualified to receive benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The

statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

The Agency rules at Iowa Admin. Code r. 871-26.14(7) provide that if the appealing party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the judge may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing. The rules further state that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)c.

The employer/appellant appealed the representative's March 12, 2014 determination, but the employer's witness failed to participate in the hearing. The employer/appellant has defaulted on its appeal. Based on Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), the March 12, 2014 determination remains in full force and effect.

If the employer/appellant disagrees with this decision, a request must be made to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the employer/appellant from participating in the hearing at its scheduled time.

DECISION:

The representative's March 12, 2014 determination (reference 01) is affirmed. As of February 23, 2014, the claimant remains qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge. .

Debra L. Wise
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

dlw/pjs